

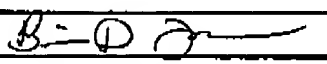
JUN 10 2008


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	Examiner Name	Akintola, Olabode	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/682,583

Filing Date: 09/21/2001

Group Art Unit: 3691

First Named Inventor: David N. Brotherston

Examiner: Akintola, Olabode

Title: **APPARATUS AND METHOD
FOR PROVIDING PRODUCTS AND
SERVICES IN A TRANSPORT VEHICLE
USING A NETWORK OF COMPUTERS**

Attorney Docket No. P3S2002336US

June 10, 2008

Gifu, Japan

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
USA

I. REAL PARTY IN INTEREST

The real party in interest is the inventor, David N. Brotherston.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-25 stand rejected and are being appealed.

IV. STATUS OF AMENDMENTS

All amendments have been entered.

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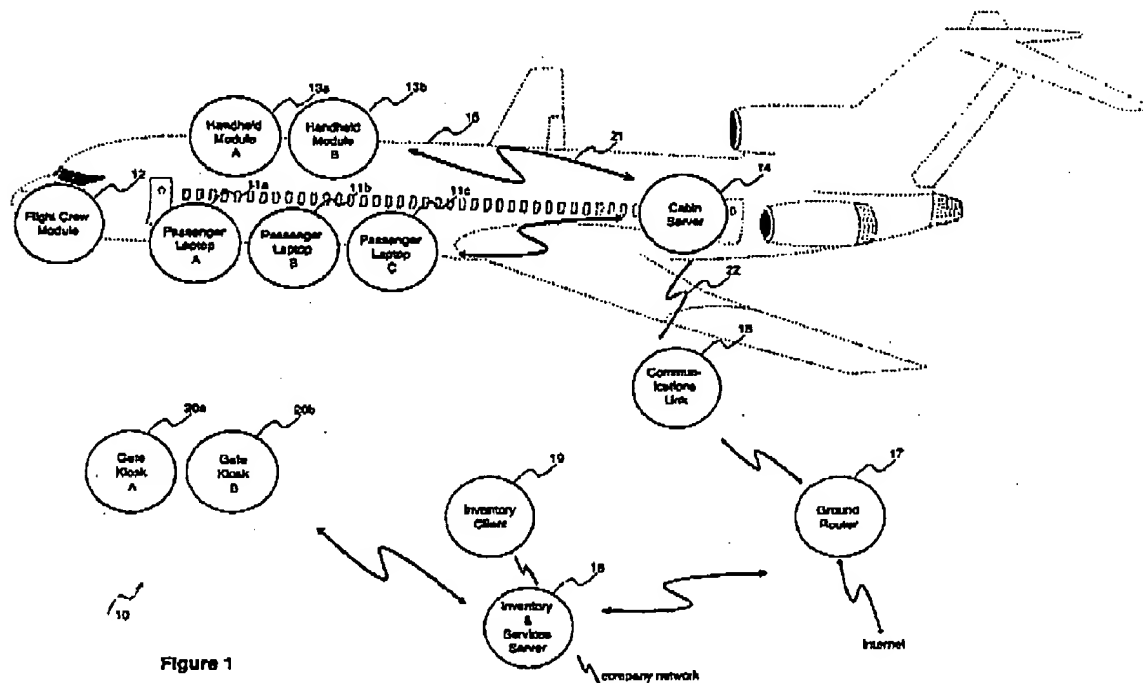
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V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Independent Claim 1

The invention recited in Claim 1 is directed to “[a] system for fulfilling services orders onboard a transport vehicle”. Figure 1 of the present application illustrates a network (12) in an exemplary fashion for a commercial aircraft (15) (Specification, Page 6, last line to Page 7, line 2). The purpose of the network is to provide a wider range of products and services to passengers more efficiently and with greater revenue potential (Specification, Page 7, lines 18 and 19). This arrangement permits mining of customer records for inventory planning and specific customer preferences (Specification, Page 16, lines 17 and 18).

Figure 1 from the application is reproduced below:



Claim 1 recites the system as comprising “a plurality of computers that include an onboard computer transported with the vehicle, and an external computer not transported

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with the vehicle". In pertinent part, the Specification at Page 7, lines 9-11 describes a computer server (14), called a Cabin Server, on the vehicle for storing data, performing calculations, and acting as a communications gateway to other members in the network. There is additionally a ground-based computer server (18), called an Inventory & Services Server, for managing product inventory and customer orders (Specification, Page 7, lines 12 and 13).

Claim 1 further recites "software installed on the onboard computer". The claim recites the software as "being operable on the onboard computer for causing the onboard computer to perform tasks". The first recited task is "obtaining service information from the external computer via communication with the external computer if a communication pathway to the external computer is open".

The Specification at Page 8, lines 24-26 describes the hardware (40) for the Cabin Server (14) as an off-the-shelf laptop or other portable personal computer having a modem (45). The modem is for Internet access via through a communications link (16) and ground router (17) (Specification, Page 7, lines 11 and 12 and Page 9, lines 1-7). The Cabin Server software (310) includes server modules to support passenger service (312) and inventory control (313) (Specification, Page 8, lines 28-30). This software operates to retrieve vehicle specific database information from the ground based server (18) and manages the customer database and inventory for the vehicle during trips (Specification, Page 8, lines 30-32). The software includes a store and forward router for TCP/IP communication, which is unique in that packets may be accumulated until a link is established (Specification, Page 8, lines 32-35).

The second recited task is "providing access to service information by vehicle personnel for fulfillment of the service orders". Access to service information is provided by handheld computers (13a) through (13b) (Specification, Page 7, lines 6-8). Cabin attendants use the handheld computers (13a) through (13b) to manage the delivery of products and

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services to the passengers (Specification, Page 7, lines 7 and 8). The computers onboard the aircraft (15) are members of a Local Area Network (LAN) (21) in which the communication medium is preferably wireless Ethernet (RF Ethernet) (Specification, Page 7, lines 20-23). Each handheld computer (13a) and (13b) includes an RF Ethernet PCMCIA card (34) for network communications with the Cabin Server (14) to receive service information for access by vehicle personnel (Specification, Page 8, lines 13-15).

Claim 1 additionally recites "software installed on the external computer". The claim recites the software as "being operable on the external computer for causing the external computer to perform tasks". The first recited task is "acquiring information to determine the available services provided on the transport vehicle". As described in the Specification at Page 9, line 35 to Page 10, line 4, the range of products and services depends on how far prior to departure time that an order is submitted for products and services.

If a user makes an advance reservation, a wide range of products and services are available for pre-ordering and delivery on the transport vehicle (Specification, Page 10, lines 25-29). If a user delays pre-ordering until reaching the gate, an order still may be submitted prior to departure via Gate Kiosks (20a) and (20b) (shown in Figure 1 above; Specification at Page 10, lines 33-35). However, the available range is determined by stores at that terminal (Specification, Page 10, lines 2 and 3). In comparison, if the user submits an advance order via the Internet, the range is determined by base stores and the logistics of delivering supply to the relevant terminal (Specification, Page 9, last line to Page 10, line 3). More particularly, the ground-based computer server (18) "facilitates a three-tier store model that includes base level stores, terminal level stores, and vehicle level stores" (Specification, Page 10, lines 10-13).

The ground-based server (18) acquires information to determine available services by communication with the Gate Kiosks (20a) and (20b), the Cabin Server (14), and an Inventory Client (19) (Specification, Page 18, lines 13-16). The Inventory Client (19) is a

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handheld device that reads inventory bar codes and communicates inventory transfers to the ground-based server (18) (Inventory & Services Server) (Specification, Lines 9 and 10).

FIG. 10a illustrates the information flow (Specification, Page 19, lines 20-22).

The second recited task for software “operable on the external computer for causing the external computer to perform tasks” is “managing the delivery of services to the transport vehicle”. Customer records are generated based upon pre-ordering that support the dynamic movement of inventory onto the vehicle (Page 19, lines 4-6). In particular, inventory control software on the ground-based server (18) in conjunction with the Inventory Client (19) is used “to move inventory from Base level stores to Terminal level stores and subsequently to create a vehicle package comprising standard Vehicle level stores plus pre-ordered product” (Specification, Page 18, lines 33-last).

The last recited task for software “operable on the external computer for causing the external computer to perform tasks” is “making service information obtainable by the onboard computer.” As stated in the Specification at Page 15, lines 7 and 8, the Cabin Server (14) is a client of the ground-based server (18). A pre-departure trip initialization uploads customer records and reported inventory from the ground-based server (18) to the Cabin Server 18 (Specification, Page 15, lines 17-19). More particularly, when initialization requests are received from a Cabin Server (443), customer records and planned inventory is transmitted via the ground router (17) and communications link (16) (Specification, Page 20, lines 5-9).

B. Independent Claim 7

The invention recited in Claim 7 is directed to “[a] system for fulfilling service orders on a transport vehicle”. The claim recites the system as comprising “an onboard computer transported with the vehicle and connections with electronic devices operated by vehicle personnel or passengers”. As discussed earlier, Figure 1 illustrates a network (12) in an

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exemplary fashion for a commercial aircraft (15) (Specification, Page 6, last line to Page 7, line 2). In particular, the Specification at Page 7, lines 8-11 describes a computer server (14) on the vehicle for storing data, performing calculations, and acting as a communications gateway to other members in the network.

The Specification at Page 7, lines 6-8 further describes handheld computers (13a) through (13b) that are used by cabin attendants to manage the delivery of products and services to the passengers. The Specification at Page 7, lines 3-5 additionally describes passenger laptop computers (11a) through (11c) that are used by passengers onboard the vehicle (15) to request and receive services. The computers onboard the aircraft (15) are members of a LAN (21) in which the communication medium is preferably wireless Ethernet (Specification, Page 7, lines 20-23).

Claim 7 further recites “the onboard computer including software, which when operated on the onboard computer and electronic devices causes the onboard computer to perform tasks”. The first recited task is “providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference”.

As described in the Specification at Page 10, lines 26-33, when making an advance reservation a user may download software (Floppy Code) for execution on the user’s laptop while onboard the transport vehicle. If the software is operated on the user’s laptop, it allows the user to “to receive pre-selected products and services without making any further request to the cabin attendant” (Specification, Page 10, lines 30-33). In addition, the Specification at Page 20, lines 27-29, describes “data mining and other database analysis tools to provide predictive information for inventory management and marketing.” In particular, a ground-based server (18) “provides a data warehouse architecture and implements data mining and other data analyses” (Specification, Page 18, lines 13-23).

FIG. 15c illustrates logic including a generic analysis mode (471) and a customer analysis mode (473) (Specification, Page 20, lines 26-31). In the generic analysis mode,

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inventory and customer records are mined for inventory planning (472). In the customer analysis mode (473), the data is mined for specific customer preferences that may be used to support smart menu options (Specification, Page 20, lines 31-34).

A pre-departure trip initialization uploads customer data from a ground-based server (18) to the onboard computer server (14) (Specification, Page 15, lines 17 and 18). Thereafter, uploaded customer data is sent to passenger laptops (11a) through (11c) and the cabin attendants' handheld computers (13a) through (13b).

C. Independent Claim 8

The first portion of Claim 8 is identical to that of Claim 7. Specifically, Claim 8 is directed to a "[a] system for fulfilling service orders on a transport vehicle". Claim 8 recites the system as comprising "an onboard computer transported with the vehicle and connections with electronic devices operated by vehicle personnel or passengers". Claim 8 further recites "the onboard computer including software, which when operated on the onboard computer and electronic devices causes the onboard computer to perform tasks". All of the foregoing recitations form the first portion of Claim 8, which is identical to the first portion of Claim 7 and therefore find support at the same locations in the Specification as discussed for these recitations of Claim 7.

Namely, Figure 1 illustrates a network (12) in an exemplary fashion for a commercial aircraft (15) (Specification, Page 6, last line to Page 7, line 2). The Specification at Page 7, lines 8-11 describes a computer server (14) on the vehicle for storing data, performing calculations, and acting as a communications gateway to other members in the network. The Specification at Page 7, lines 6-8 further describes handheld computers (13a) through (13b) that are used by cabin attendants to manage the delivery of products and services to the passengers. The Specification at Page 7, lines 3-5 additionally describes passenger laptop computers (11a) through (11c) that are used by passengers onboard the vehicle (15) to request

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and receive services. The computers onboard the aircraft (15) are members of a LAN (21) in which the communication medium is preferably wireless Ethernet (Specification, Page 7, lines 20-23).

Claim 8 differs from Claim 7 only in two respects. First, Claim 8 recites that “the electronic devices include passenger supplied personal information processing apparatus carried on by passengers.” This is supported by the Specification in the description of passenger laptops 11(a) through 11(c) as discussed above for Claim 7.

Second, Claim 8 recites different tasks performed by the onboard computer. In particular, Claim 8 recites the tasks “comprising accepting service orders entered via the electronic devices by vehicle personnel or passengers and making the service orders accessible to vehicle personnel”. In this regard, the Specification at Page 7, lines 6-8 describes handheld computers (13a) and (13b) that are used by cabin attendants to manage the delivery of products and services to the passengers. Passenger requests for services to a cabin attendant during a trip are recorded by the cabin attendant using one of the handheld computer (13a) and (13b) (Specification, Page 13, lines 15-17). The cabin attendant uses the handheld computer (13a) or (13b) “during the trip to manage distribution of the ordered products and services and record delivery to all passengers” (Specification, Page 13, lines 18-20).

If a passenger has one of the laptop computers (11a) through (11c), the passenger may use the laptop to request and receive services (Specification, Page 7, lines 3-5). The passenger laptops eliminate the requirement for a cabin attendant to process service requests (Specification, lines 27-29). The passenger laptops 11(a) through 11(c) are configured with software obtained via a Gate Kiosk (20a) or (20b) or the Internet to submit service requests via the LAN (21) (Specification, Page 7, lines 25-27). Order requests from passenger laptops (11a) through (11c) are submitted to the onboard computer server (14) (Specification, Page 7, line 36 to Page 8, line 1). Moreover, the onboard server (14) “features

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a user interface that allows cabin attendants to monitor and control the efficient management of product and service delivery from the galley area” (Specification, Page 15, lines 9-11).

D. Independent Claim 16

Claim 16 is directed to “[a] system for fulfilling service orders on a transport vehicle”. Figure 1 illustrates a network (12) in an exemplary fashion for a commercial aircraft (15) (Specification, Page 6, last line to Page 7, line 2). The claim recites the system as “comprising an external computer not transported with the vehicle”. The Specification at Page 7, lines 12 and 13, further describes a ground-based computer server (18), called an Inventory & Services Server, for managing product inventory and customer orders.

Claim 16 recites the external computer as including software “operable on the external computer for causing the external computer to perform tasks”. The first task recited is “accessing database information pertaining to vehicle departure, destination, past services orders, and inventory information”. As described in the Specification at Page 18, lines 13-23, the ground-based server (18) “provides a data warehouse architecture and implements data mining and other data analyses.” The Specification at Page 20, lines 27-29, further describes the ground-based server as implementing “data mining and other database analysis tools to provide predictive information for inventory management and marketing.” The ground-based computer server (18) has “storage capacity to support large databases of current and historical customer records in addition to all inventory data” (Specification, Page 9, lines 12-17). The claimed arrangement advantageously permits mining of customer records for inventory planning and specific customer preferences (Specification, Page 16, lines 17 and 18).

The next recited task is “based on the database information, estimating service orders expected to be received and recommending inventory for transport with the vehicle for onboard fulfillment of service orders”. As described in the Specification at Page 19, lines 9-11, “[t]hese databases support offline analysis to predict buying patterns and determine both the range of products and procurement strategies”.

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The last recited task is "providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference". FIG. 15c illustrates logic including a generic analysis mode (471) and a customer analysis mode (473) (Specification, Page 20, lines 26-31). In the generic analysis mode, inventory and customer records are mined for inventory planning (472). In the customer analysis mode (473), the data is mined for specific customer preferences that may be used to support smart menu options (Specification, Page 20, lines 31-34). Prior to vehicle trip departure, inventory control software on the ground-based computer server is used "to move inventory from Base level stores to Terminal level stores and subsequently to create a vehicle package comprising standard Vehicle level stores plus pre-ordered product (Specification, Page 18, line 33 to last).

A pre-departure trip initialization uploads customer data from the ground-based server (18) to an onboard computer server (14) (Specification, Page 15, lines 17 and 18). Thereafter, uploaded customer data is sent to passenger laptops (11a) through (11c) and the cabin attendants' handheld computers (13a) through (13b). As described in the Specification at Page 10, lines 26-33, when making an advance reservation a user may download software (Floppy Code) for execution on the user's laptop while onboard the transport vehicle. If the software is operated on the user's laptop, it allows the user to "to receive pre-selected products and services without making any further request to the cabin attendant" (Specification, Page 10, lines 30-33).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claim 1 is obvious over US Patent No. 5,311,302 to Berry et al. ("*Berry*") in view of US Patent No. 5,444,444 to Ross ("*Ross*") under 35 USC 103(a).

2. Whether Claim 5 is obvious over Berry and Ross in view of US Patent No. 6,249,774 to Roden et al. ("*Roden*") under 35 USC 103(a).

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3. Whether Claim 7 is obvious over Berry in view of US Patent No. 5,850,433 to Rondeau ("*Rondeau*") under 35 USC 103(a) and whether the Examiner may distill the claimed invention down to a "concept".

4. Whether Claim 8 is obvious over Berry in view of US Patent No. 5,727,163 to Bezos ("*Bezos*") under 35 USC 103(a) and whether Berry teaches away from communication with customer supplied information processing equipment in which cost is borne by the customer by teaching a closed-system with in seat-installation of airline supplied equipment.

5. Whether the Examiner must provide documentary evidence to sustain the obviousness rejection of Claim 9 based on "common knowledge" and whether the Examiner violated Applicant's due process rights by failing to provide sufficient notice for the reason for rejection of Claim 9 and an opportunity to be heard regarding those reasons prior to issuing a Final Office Action.

6. Whether Claim 16 is obvious over (1) Berry, (2) Ross, (3) Rondeau, (4) Roden and (5) US Patent No. 6,122,620 to Weber ("*Weber*") under 35 USC 103(a) and whether the Examiner may distill the claimed invention down to a "concept".

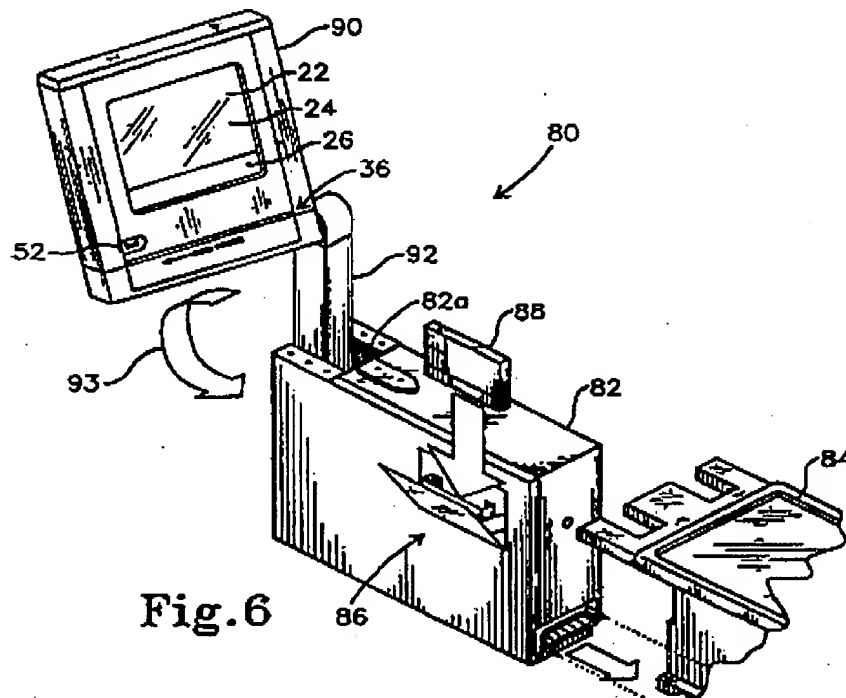
VII. ARGUMENT

Grounds of Rejection #1 To Be Reviewed:

Claim 1 stands rejected in a Final Office Action dated January 10, 2008 as obvious over Berry in view of Ross (Final Office Action, page 2). Berry discloses an interactive video entertainment and data management system (10) for a passenger vehicle, such as an aircraft (Berry, Col. 3, lines 4-14). In particular, Berry teaches providing a central terminal (12) in an aircraft with remote video terminals (14) mounted in passenger seatbacks (16) or remote video terminals (80) in seat armrest consoles (84) (Berry, Col. 3, lines 4-14 and Col. 6,

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line 66 to Col. 7, line 5). Fig. 6 from Berry is reproduced as follows illustrating one of the remote video terminals (80) for a seat armrest console (84):



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The Examiner acknowledges in the Final Office Action that “Berry does not explicitly teach an external computer not transported with the vehicle” (Final Office Action, Page 2). In addition, the Examiner does not assert that Berry discloses the recitations in paragraph (b) through the end of Claim 1. For this reason, the Examiner cites Ross and asserts a combination Berry and Ross in rejecting Claim 1.

Ross is directed to an apparatus and method for notifying a recipient of an unscheduled delivery (Ross, Front Page, title). A preferred embodiment of such an apparatus includes a delivery vehicle having a controller (10) (Ross, Col. 3, lines 25-29, Figs. 1 and 3). Further included is a communications apparatus (20) for communications to a selected one of a plurality of recipients (21) of articles and packages to be delivered by the operator of that particular delivery vehicle (Ross, Col. 3, lines 56-65). The communication apparatus (20) in addition communicates with a central controller that is preferably a main-frame computer (Ross, 4, lines 1 and 2). The central controller (22) communicates through a multiplexer with a plurality of controllers (10) with each controller (10) being in one of the delivery vehicles for a delivery company (Ross, Col. 3, line 65 to Col. 4, line 7).

The Examiner asserts that Ross teaches an onboard computer in the form of the controller (10) and “an external computer not transported with the vehicle” in the form of the controller (22) (Final Office Action, page 3). In addition, the Office Action asserts that the disclosure in Ross at Col. 3, lines 65 through Col. 4, line 22, meets all of the recitations of paragraph (c) in Claim 1, including the three subparagraphs (i) through (iii).

The rejection of Claim 1 based on the Berry/Ross combination is improper and should be reversed because the Examiner has ignored a claim recitation that the asserted combination does not meet. Specifically, the Examiner states at Page 3 of the Final Office Action that Ross teaches software being operable on the external computer to perform tasks including “i) acquiring information to determine the available services provided; and ii)

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managing the delivery of services. That is incorrect and omits part of the pertinent recitation from Claim 1. The correct recitation with the foregoing omitted portion shown in bold is “i) acquiring information to determine the available services provided ***on the transport vehicle***”.

The Examiner repeats the same error on Page 11 of the Final Office Action.

According to the Examiner “Ross teaches a path for communicating *delivery status information* between the controller 10 and central controller 22” (emphasis in original). The Examiner parenthetically concludes that this meets the recitation of “*acquiring information to determine the available services provided*” (Final Office Action, Page 11, emphasis in original). Again, the Examiner has ignored the recitation of “***on the transport vehicle***” in subparagraph i) of paragraph (c) in Claim 1 (emphasis added).

The recipients of the deliveries in Ross are not on the asserted transport vehicle, i.e., the delivery vehicle. Hence, “communicating delivery status” does not meet the recitation of “*acquiring information to determine the available services provided on the transport vehicle*” because delivery in Ross does not occur on the vehicle. Information regarding delivery status in Ross therefore cannot be “used to determine the available services provided on the transport vehicle” as deliveries are not provided on the transport vehicle.

Moreover, the suggestion in Ross is that deliveries would never occur on a transport vehicle. According to Ross “passengers on an aircraft are items to be delivered to recipients (i.e., persons meeting the passenger at the airport” (Ross, Col. 7, 24-27). Thus, Ross does not contemplate that deliveries would ever be made to recipients on a transport vehicle because passengers are items to be delivered and NOT recipients.

In addition, “communicating delivery status” is not a service. The status in Ross is information indicating whether the service has been completed, i.e., delivery, and not information indicating the “available services provided on the transport vehicle” as recited in Claim 1.

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While pending claims in examination are given their broadest reasonable interpretation, that interpretation must be consistent with the specification. MPEP 2111; Phillips v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (en banc). Equating status with service as the Examiner has done is inconsistent with the present specification.

Namely, the present application in the written description and drawings describes status as different and not the same as service. In particular, the Specification at Page 17, line 33 to Page 18, line 1, describes record status being sent back to a new passenger laptop (11a) through (11c) or a handheld module (13a) or (13b) when joining the network (378) on the transport vehicle. The record status is not the same as service because the next sentence states that “[i]f a service request is received” different processing occurs showing that returning status is not equated with providing service (Specification, Page 18, lines 1-4). This interpretation is also supported in the Specification at Page 14, lines 19 and 20, which states that “[s]ervice requests, including credit card verifications 259 communicate with the Cabin Server 14 to update the status 260”. Status (260) in the present application is shown in Figure 13b, which is reproduced on the following page:

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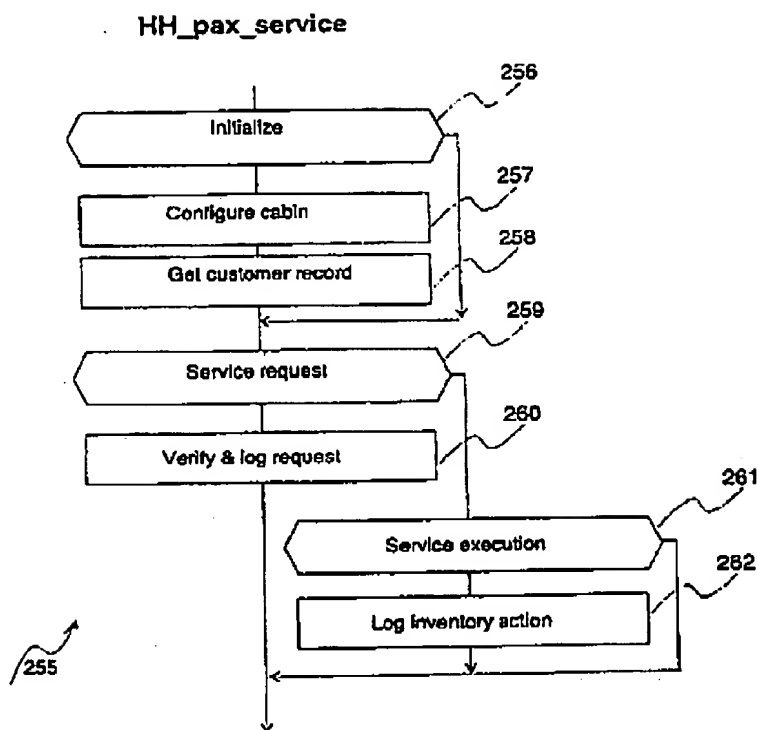


Figure 13b

As can be seen status (260) is labeled in Figure 13b as “Verify & log request” and is thereafter followed by “Service execution”. Therefore, returning status is not the same as providing service in the present written description and drawings. Specifically, providing service, i.e., service execution (261) is different than providing status.

Applicant was fully cognizant and versed in the usage of the word status at the time of filing of the application as shown by the above usage in the Specification and drawing figures. The word status is used at several other locations in the Specification, for example at Page 7, line 36; Page 12, line 9; Page 14, line 11; Page 14, line 25; and also in Figure 12b. If the Applicant had intended to recite status in Claim 1, it would have been done, for example by reciting “acquiring information to determine the *status* of available services provided on

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the transport vehicle". However, that was not what was intended, which is why status is not recited in Claim 1.

Construction of the word service as including status is therefore not supported by the words of the claim, the description in the Specification, and the drawing figures. Accordingly, the Examiner's construction of the recitation of service in Claim 1 as equivalent to status is inconsistent with the specification and therefore incorrect. Accordingly, the Examiner's rejection for obviousness should be reversed.

Finally, the US Supreme Court in KSR International Co. v. Teleflex Inc., stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." 82 USPQ2d 1385, 1396 (2007), quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329 (Fed. Cir. 2006). The reasoning presented by the Examiner is conclusory and not articulated. Namely, the Examiner's only reasoning is a conclusory statement made without support that one would have been motivated to combine Berry and Ross "in order to monitor and coordinate delivery of product to [a] recipient" (Final Office Action, Page 3).

Even if the alleged motivation for combination was true, no reasoning has been provided as to why one would be motivated to monitor and coordinated delivery of products to a recipient "*on a transport vehicle*" as is recited in Claim 1. The suggestion in Ross as discussed above is that this would never occur because Ross teaches that "passengers on an aircraft are items to be delivered to recipients (i.e., persons meeting the passenger at the airport)" (Ross, Col. 7, 24-27). Thus, Ross does not contemplate that deliveries would ever be made to recipients on a transport vehicle and therefore teaches away from the claimed invention. As discussed in MPEP 2145, "[a] prior art reference that 'teaches away' from the claimed invention is a significant factor to be considered in determining obviousness".

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Finally, a method as taught in Ross for making unscheduled deliveries is not supported by some rational underpinning for making deliveries to passengers on a commercial passenger aircraft as disclosed in Berry. Access to aircraft, especially commercial passenger aircraft, is highly restricted to prevent terrorism. A person of ordinary skill in the art would therefore not be motivated in applying the teachings of Ross to Berry as airports would not allow unscheduled deliveries of packages to aircraft passengers as this would greatly compromise security. Moreover, it is unlikely that unscheduled deliveries would be allowed to passengers on any form of public transportation due to security concerns.

Section 2142 of the MPEP provides that “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness” (emphasis in original; also see In re Oeticker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). As further provided in MPEP 2142 “[i]f the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness (emphasis in original).

The Examiner has not met the initial burden of factually supporting a *prima facie* conclusion of obviousness. As discussed above, the asserted combination does not meet all of the recitations of the claim, the claim has been improperly construed, the cited prior art teaches away from the claim, and articulated reasoning with some rational underpinning has not been provided. Accordingly, reversal of the rejection of Claim 1 is respectfully requested.

Grounds of Rejection #2 To Be Reviewed:

Claim 5 stands rejected in the Final Obvious Action as obvious Berry in view of Ross, and further in view of Roden (Final Office Action, Page 4). According to the first line of the abstract, Roden discloses “[a] method by which a distributor owns, manages, and automatically replenishes the inventory of a business that is a customer of the distributor.”

The rejection of Claim 5 based on the combination of Berry, Ross and Roden is improper and should be reversed because the Examiner has ignored claim recitations that the

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asserted combination does not meet. Specifically, the Examiner asserts at Page 5 of the Final Office Action that "Roden teaches the step wherein the external computer software is further operable on the external computer for analyzing at least one of historical information and currently entered service order information, and based on the analysis recommends vehicle inventory".

Nowhere, however, has the Examiner pointed out where the asserted combination meets the last phrase in the claim, namely wherein the external computer software "associates each current service order with a vehicle departure and makes the information obtainable by the onboard computer". The Examiner did not address the foregoing recitation in Claim 5 and therefore has failed to establish a prima facie case of obviousness.

Claim 5 depends from Claim 1 and therefore distinguishes over the cited prior art in addition to the reasons discussed for Claim 1. Accordingly, reversal of the rejection of Claim 5 is respectfully requested.

Grounds of Rejection #3 To Be Reviewed:

Claim 7 stands rejected in the Final Office Action as obvious over Berry in view of Rondeau (Final Office Action, Page 6). According to the title and Col. 1, lines 5-7 and 54-55, Rondeau is directed to a system and method for providing an on-line, electronic directory service. According to the abstract, the directory service maintains a database and "develops individual customer profiles for individual customers and stores these profiles in the database." The profiles include historical directory usage information and may be used to customize menu screens and search results provided to a customer.

Currently pending Claim 7 in pertinent part recites "providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference". There is no teaching or suggestion in Rondeau that customers may pre-

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select products and services in which menu options are provided “that vary based on pre-selected products and services *and* historical preference” (emphasis added).

In response to the above-noted distinguishing recitation of Claim 7, the Examiner merely responds with an unsupported conclusory statement that “Rondeau explicitly teaches the *concept* of using customer historical usage or profile to customize [a] menu screen presented to the customer” (Final Office Action, Page 11, emphasis added).

The rejection of Claim 7 is in error because the Examiner has impermissibly distilled the invention down to a “concept” in violation of the requirement that the claimed invention as a whole must be considered. As stated in Section 2141.02 of the Manual of Patent Examining Procedure (“MPEP”) on Page 2100-123, second column (emphasis in original):

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.

As further stated on the following page of the MPEP “[d]istilling an invention down to the “gist” or “thrust” of an invention disregards the requirement of analyzing the subject matter as “as a whole” (MPEP, Section 2141.02(II), first column, citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 US 851 (1984). This includes distilling an invention down to a “concept” as the Examiner has done, see Bausch & Lomb v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 447-49, 230 USPQ 416, 419-20 (Fed. Cir. 1986), *cert. denied*, 484 US 823 (1987). In Bausch & Lomb, the district court improperly focused on the “concept” of the invention and ignored express claim recitations.

There has been a failure to establish a prima facie case of obviousness. As stated in Section 2142 of the Manual of Patent Examining Procedure (“MPEP”) in the paragraph bridging pages 2100-127 and 2100-128, “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have

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been obvious”, citing the US Supreme Court in KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007).

The Examiner has not clearly articulated why Berry and Rondeau render obvious “providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference”. In particular, there has been no citation to locations in either cited prior art reference pertaining to “pre-selected products and services” and providing menu options that vary based both on preselected products and services and historical preference. More particularly, the Examiner has ignored express recitations in Claim 7 of “providing menu options adapted for specific customer preferences that vary based on *pre-selected products and services and historical preference*” (emphasis added). Accordingly, reversal of the rejection of Claim 7 is respectfully requested.

Grounds of Rejection #4 To Be Reviewed:

Claim 8 stands rejected as obvious over Berry in view of Bezos. As can be seen from the abstract, Bezos teaches a system for using a credit card over an unsecured network to submit an order to “a remote merchant location (32) from a customer’s location (10).” In particular, the order is transmitted over the Internet to the remote merchant location (32), but includes only a subset of the credit card number to which the order is to be charged (Bezos, Abstract). The customer thereafter telephones the remote merchant location and provides the complete credit card number (Bezos, Abstract). Figure 1 from Bezos illustrates the principal components used to implement the system (Bezos, Col. 4, lines 41-43). Figure 1 from Bezos is reproduced below:

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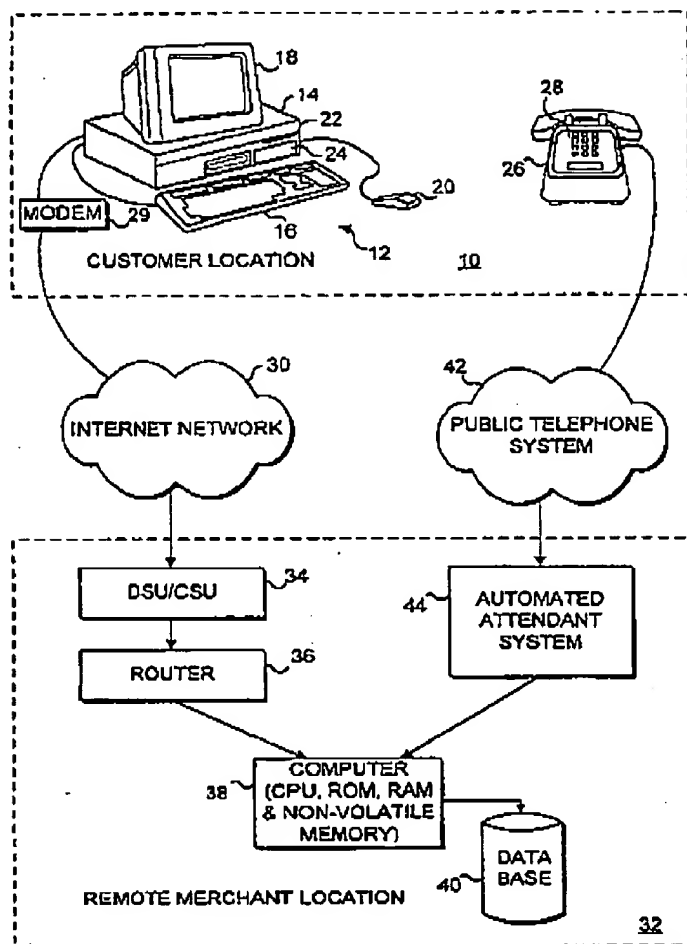


FIG. 1

The Final Office Action asserts that Bezos teaches using a laptop or PDA to place an order and that it would have been obvious to modify Berry to “include this feature...in order to incorporate [a] portable device as an alternative to [a] fixed device” (Final Office Action, Page 9).

Modifying Berry to include the teachings of Bezos would be redundant and defeat the intended purpose of the disclosed arrangement in Berry. Figure 2 from Berry is reproduced as follows:

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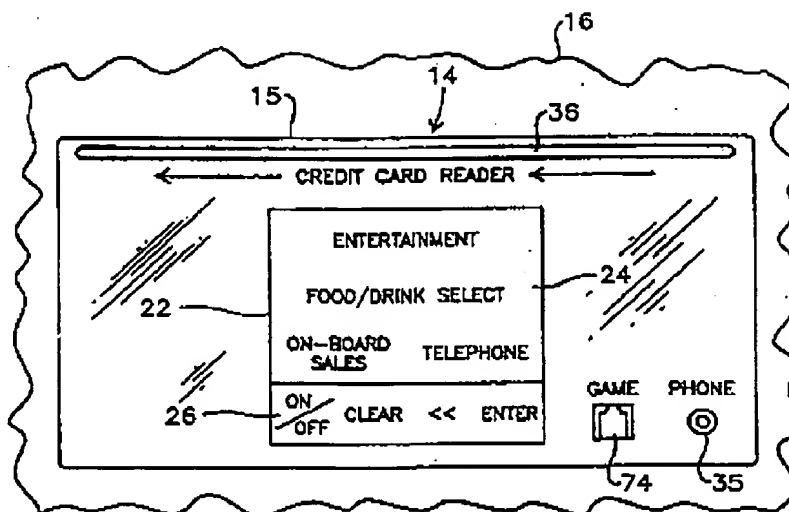


Fig.2

As can be seen from Figure 2, Berry already includes a credit card reader (36) for each passenger seat in the aircraft. There is therefore no need or motivation to implement a system for using a credit card over an unsecured network as taught in Bezos.

In addition, the system in Berry is secure. Allowing passengers to connect their own personal computers to the system as taught by Bezos would introduce vulnerabilities creating an unsecure network and defeating the intended purpose of the invention in Berry. The purpose of the invention in Berry is to increase cabin management efficiency by providing for ordering of catalog items, credit card payments, and placement of telephone calls "that are entirely free of flight attendant participation" (Berry, Col. 2, lines 38-44).

Bezos teaches a system for secure credit card payments over an unsecure network by submitting only a portion of the credit card number and thereafter telephoning the merchant to provide the complete credit card number. This would defeat the goal of increased cabin management efficiency in Berry by requiring flight attendants to receive the complete credit card number for secure credit card transactions as taught by Bezos. Accordingly, reversal of the obviousness rejection of Claim 8 is respectfully requested.

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Grounds of Rejection #5 To Be Reviewed:

Claim 9 stands rejected as obvious over Berry in view of Bezos "since it is well known that [a] PDA uses wireless connectivity in communication with other devices" (Final Office Action, Page 12). There are two principal improprieties that warrant reversal of the rejection of Claim 9.

First, the Office Action immediately prior to the Final Office Action failed to state any reason for the rejection of Claim 9. This is conceded in the Final Office Action on Page 12. Applicant did not know the basis for the rejection and had no opportunity to reply to the rejection of Claim 9 before the issuance of the Final Office Action, violating Applicant's due process rights under the 5th Amendment to the US Constitution.

Second, the Examiner cannot reject Claim 9 on the unsupported conclusory statement that "it is well known that [a] PDA uses wireless connectivity in communication with other devices". Applicant timely traversed this assertion pursuant to MPEP 2144.03 in an Amendment dated June 20, 2007 (6/20/2007 Amendment, Page 14, line 22 to Page 17, line 2). In the 6/20/2007 Amendment, Applicant specifically pointed out the errors in the Examiner's previous action, including a statement as to why the assertion that wireless connectivity was not considered to be common knowledge or well-known in the art.

Namely, the present application has an effective US filing date of April 19, 1999 based upon a provisional application. The proper standard in concluding whether something "is well known" is whether it was well known prior to April 19, 1999. As stated in MPEP 2144.03(A) "the notice of facts beyond the record which may be taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute'" (quoting In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), (citing In re Knapp Monarch Co., 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

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As of the effective filing date of the present application, wireless communication between “passenger supplied personal information processing apparatus carried on by passengers and [an] onboard computer” as recited in Claim 9 is not “capable of such instant and unquestionable demonstration as to defy dispute”. If it were, Berry, which has a filing date of July 2, 1992, should have disclosed the subject matter. Alternatively, Bezos, which was has filing date of March 30, 1995 and mentions a PDA, should have disclosed it.

If such subject matter is indeed “capable of such instant and unquestionable demonstration as to defy dispute” prior to the US effective filing date of the present application, it should not be difficult to locate and cite prior art documents supporting the rejections that were made by the Examiner based on the assertion of this subject matter being well known.

As stated in MPEP 2144.03(C) “[i]f applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary office in the next Office action if the rejection is to be maintained (sentence bridging Pages 2100-146 and 2100-147, citing 37 CFR 1.104(c)(2)). The Examiner originally made the assertion based on official notice in the Office Action of March 20, 2007 on Page 3. Applicant adequately traversed the rejection of Claim 9 and the Examiner did not cite documentary evidence to support the rejection in the next Office action or even state the reasons for the rejection of Claim 9.

Finally, even if it is well known “that [a] PDA uses wireless connectivity in communication with other devices”, the asserted prior art combination still does not meet all of the recitations of Claim 9. Namely, Claim 9 recites “wireless communication between the passenger supplied personal information processing apparatus carried on by passengers and the *onboard* computer” (emphasis added). While it may be well known for a PDA to use wireless connectivity with ground-based devices, it is not well known for such communication between “an onboard computer transported with the vehicle” as recited in

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Claim 1 from which Claim 9 depends, and “passenger supplied personal information processing apparatus carried on by passengers” as recited in Claim 9.

Moreover, Claim 9 depends from Claim 8 and is therefore nonobvious over the cited prior art in addition to the reasons discussed for Claim 8. Accordingly, reversal or the rejection of Claim 9 is respectfully requested.

Grounds of Rejection #6 To Be Reviewed:

Claim 16 stands rejected in the Final Office Action as obvious over the combination of (1) Berry, (2) Ross, (3) Rondeau, (4) Roden and (5) Weber. The last sentence on Page 12 of the Final Office Action states that “Rondeau is cited for teaching customizing [a] customer menu based on historical usage” and ends with the parenthetical comment “see claim 7 analysis”.

As discussed previously, the Examiner’s analysis of Claim 7 is in error because he impermissibly distilled the invention down to a “concept” in violation of the requirement that the claimed invention as a whole must be considered (MPEP 2141.02 and Bausch & Lomb v. Barnes-Hind/Hydrocurve, Inc., 796 F.2d 443, 447-49, 230 USPQ 416, 419-20 (Fed. Cir. 1986), *cert. denied*, 484 US 823 (1987)).

The Examiner concedes that Berry, Ross, Rondeau, and Roden do not teach “accessing database information pertaining to vehicle departure and destination” (Final Office Action, Pages 9, 10 and 12. Due to this shortcoming, the Examiner cites Weber, which is directed to a system for radio transmission of real-time airline flight information (Weber, Title). In particular, the system gathers flight information, converts it to an audio signal and transmits it for reception by an airport visitor’s automobile via radio frequencies (Weber, Col. 2, lines 19-23). With respect to Weber, the patent is directed to a system for radio transmission of real-time airline flight information (Weber, Title). In particular, the system gathers flight information, converts it to an audio signal and transmits it for reception by an airport visitor’s

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automobile via radio frequencies (Weber, Col. 2, lines 19-23). Accordingly, “the airport visitor has the information needed to determine whether they need to go to either take or meet a flight” (Weber, Col. 2, lines 27-29).

The Examiner asserts that Weber teaches “accessing database information pertaining to vehicle departure and destination” (Final Office Action, Page 10) and that “Roden[t] is cited for teaching past service[s] information and inventory information” (Final Office Action, Page 12). Based upon the foregoing, the Examiner concludes that Weber and Roden render obvious the recitation in Claim 16 of “accessing database information pertaining to vehicle departure, destination, past service[s] orders, and inventory information”.

According to the US Supreme Court, it is legally insufficient to conclude that a claim is obvious just because each feature of a claim can be independently shown in the cited art. KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007). In particular, “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way that the new claimed invention does.” *Id.*

No such reason has been identified. As noted above, Weber is directed to providing real-time airline flight information, which is not useful in the claimed invention. The claimed invention is directed to a system for fulfilling service orders on a transport vehicle, which requires positioning inventory in advance, i.e., not based upon information in real-time. More particularly, the Examiner has not provided a reason why a person of ordinary skill in the art would have been prompted to combine a portion of a reference directed to providing real-time information with another reference directed to past service information and inventory information upon other than the present application.

While the foregoing recitation of Claim 16 may appear to be obvious based upon Weber and Roden in hindsight, this recitation was not obvious at the time of the US effective filing date of the present application in 1999. As noted by the US Supreme Court, “[a] factfinder should be aware, or course, of the distortion caused by hindsight bias and must be

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cautious of arguments reliant upon *ex post* reasoning. *Id.* at 1397 (emphasis in original). It is respectfully submitted that due to the lengthy pendency of the application in the US Patent and Trademark Office, hindsight has colored the conclusions reached by the Examiner.

Finally, as discussed above in connection with Claim 7, the Examiner has ignored recitations in Claim 7 and these recitations also appear in Claim 16. Namely, there has been no citation to locations in the cited prior art pertaining to "pre-selected products and services" and providing menu options that vary based both on preselected products and services and historical preference. More particularly, the Examiner has ignored the recitations in Claim 16 of "providing menu options adapted for specific customer preferences that vary based on *pre-selected products and services and historical preference*" (emphasis added).

For the foregoing reasons, reversal of the rejection of Claim 16 is respectfully requested.

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CONCLUSION

In conclusion, reversal is respectfully requested of the Examiner's rejection of Claims 1-25 as obvious under 35 USC 103. In particular, the foregoing argument discussed a number of errors in the rejections that warrant reversal, such as impermissibly distilling the invention down to a "concept," lack of articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, claim construction that is not consistent with the specification, hindsight bias, and recitations that have been ignored in the claims. In the previous Office Action, there was even a failure to address all of the claims, i.e., Claim 9.

The above argument addressed each of the independent claims in the application, i.e., Claims 1, 7, 8, and 16, as well as some of the dependent claims. As each of the other dependent claims in the application depends directly or indirectly from one of the independent claims, all of the claims in the application are submitted to have been rejected in error.

For these reasons, it is submitted that the Examiner has not established a prima facie case of obviousness for the rejection of any of the claims and that all of the rejections should be reversed.

Respectfully submitted,



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VIII. CLAIMS APPENDIX

1. (rejected) A system for fulfilling services orders onboard a transport vehicle, the system comprising:

(a) a plurality of computers that include an onboard computer transported with the vehicle, and an external computer not transported with the vehicle;

(b) software installed on the onboard computer, the onboard computer software being operable on the onboard computer for causing the onboard computer to perform tasks including:

i) obtaining service information from the external computer via communication with the external computer if a communication pathway to the external computer is open; and

ii) providing access to service information by vehicle personnel for fulfillment of the service orders; and

(c) software installed on the external computer, the external computer software being operable on the external computer for causing the external computer to perform tasks including:

i) acquiring information to determine the available services provided on the transport vehicle; and

ii) managing the delivery of services to the transport vehicle; and

iii) making service information obtainable by the onboard computer.

2. (rejected) The system of claim 1, wherein at least some service orders include requests for delivery of products to passengers, and the onboard computer software includes logic routines adapted for managing delivery of products in accordance with service orders, and billing of passengers for fulfillment of service orders.

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3. (rejected) The system of claim 2, wherein the logic routines associate a seat location with each service order.

4. (rejected) The system of claim 1, wherein the external computer software is further operable on the external computer for accepting service orders prior to boarding and associates each service order with a vehicle departure and makes the information obtainable by the onboard computer.

5. (rejected) The system of claim 1, wherein the external computer software is further operable on the external computer for analyzing at least one of historical service order information and currently entered service order information, and based on the analysis recommends vehicle inventory, and associates each current service order with a vehicle departure and makes the information obtainable by the onboard computer.

6. (rejected) The system of claim 1, wherein at least some of the service orders include requests for delivery of products and the external computer software further comprises software logic operable for managing flow of inventory from a terminal to the vehicle and from other sources to the terminal.

7. (rejected) A system for fulfilling service orders on a transport vehicle, the system comprising an onboard computer transported with the vehicle and connections with electronic devices operated by vehicle personnel or passengers, the onboard computer including software, which when operated on the onboard computer and electronic devices causes the onboard computer to perform tasks comprising providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference and accepting service orders entered via the electronic devices by vehicle

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personnel or passengers and making the service orders accessible to vehicle personnel.

8. (rejected) A system for fulfilling service orders on a transport vehicle, the system comprising an onboard computer transported with the vehicle and connections with electronic devices operated by vehicle personnel or passengers, the onboard computer including software, which when operated on the onboard computer and electronic devices causes the onboard computer to perform tasks comprising accepting service orders entered via the electronic devices by vehicle personnel or passengers and making the service orders accessible to vehicle personnel, wherein the electronic devices include passenger supplied personal information processing apparatus carried on by passengers.

9. (rejected) The system of claim 8, wherein the connections comprise wireless communication between the passenger supplied personal information processing apparatus carried on by passengers and the onboard computer.

10. (rejected) The system of claim 7, wherein the electronic devices include handheld computers used by vehicle personnel for creating and accessing service orders on the onboard computer by communication between the handheld computers and the onboard computer.

11. (rejected) The system of claim 10, wherein the communication between the handheld computers and the onboard computer comprises wireless communication.

12. (rejected) The system of claim 7, wherein the handheld or onboard computers include hardware and software enabling reading of cards for facilitation of onboard cash-less transactions.

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13. (rejected) The system of claim 7, further comprising an external computer not transported with the vehicle, the external computer including software being operable on the external computer for causing the external computer to perform tasks comprising: a) accepting service orders for passengers via communication with other computers through which service orders are entered; b) making accepted service orders obtainable by the onboard computer, wherein the onboard computer software is operable for obtaining passenger service orders from the external computer if a communication route to the external computer is open; and c) validating credit transactions communicated by the onboard computer if a communication route to the onboard computer is open.

14. (rejected) The system of claim 13, wherein the external computer software is further operable on the external computer for accepting service orders prior to passenger boarding, and associates each service order with a flight and makes the information obtainable by the onboard computer.

15. (rejected) The system of claim 13, wherein if a service order includes a request for Internet access, the onboard computer provides Internet access to a connection at a passenger seat location corresponding to the service order, by making use of said communication route.

16. (rejected) A system for fulfilling service orders on a transport vehicle, the system comprising an external computer not transported with the vehicle, the external computer including software being operable on the external computer for causing the external computer to perform tasks comprising: a) accessing database information pertaining to vehicle departure, destination, past services orders, and inventory information; b) based on the database information, estimating service orders expected to be received and recommending inventory for transport with the vehicle for onboard fulfillment of service orders; and

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providing menu options adapted for specific customer preferences that vary based on pre-selected products and services and historical preference.

17. (rejected) The system of claim 16, wherein the external computer accepts service orders via communication with other computers through which service orders are entered.

18. (rejected) The system of claim 17, wherein the other computers include kiosks at terminal areas.

19. (rejected) The system of claim 17, wherein the other computers include computers connected to the Internet.

20. (rejected) The system of claim 17, wherein the external computer software is further operable on the external computer for analyzing currently accepted service orders prior to boarding to determine needed inventory for onboard service order fulfillment and associates each service order with a vehicle departure and makes the information obtainable by the onboard computer.

21. (rejected) The system of claim 16, wherein the external computer software is further operable on the external computer for recommending based on the database information, inventory for terminal storage for replenishing onboard inventory.

22. (rejected) The system of claim 16, further comprising an onboard computer, including software installed on the onboard computer, the onboard computer software being operable on the onboard computer for causing the onboard computer to perform tasks including: a) obtaining service information from the external computer via communication

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with the external computer if a communication pathway to the external computer is open; and
b) providing access to service information by vehicle personnel for fulfillment thereof.

23. (rejected) The system of claim 16, wherein at least some of the service orders include requests for delivery of products and the external computer software further comprising software logic operable for managing flow of inventory from the terminal to the vehicle and from other sources to the terminal.

24. (rejected) The system of claim 22 wherein the onboard computer software further comprises routines used to manage product flow on the vehicle and residual product flow off the vehicle.

25. (rejected) The system of claim 1, further comprising handheld computers used by vehicle personnel for creating and accessing service orders on the onboard computer by communication between the handheld computers and the onboard computer.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.